UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

Lykos

Mailed: July 13, 2005

Opposition Nos. 91115866 and 91157981

Cancellation Nos. 92028126; 92028127; 92028130; 92028133; 92028145; 92028155; 92028171; 92028174; 92028199; 92028248; 92028280; 92028294; 92028314; 92028319; 92028325; 92028342; and 92028379

Prairie Island Indian Community, Plaintiff

v.

Treasure Island Corp., Defendant

(as consolidated)

Before Seeherman, Bucher and Drost, Administrative Trademark Judges.

By the Board:

This case now comes up for consideration of plaintiff's motion (filed March 15, 2005) for summary judgment on the grounds of priority and likelihood of confusion in Cancellation No. 92028130. The parties have fully briefed the motion.[1]

[1] The Board has exercised its discretion to consider plaintiff's reply brief because it clarifies the issues herein. *See* Trademark Rule 2.127(a).

The Board has carefully reviewed the parties' respective arguments and accompanying exhibits, although the Board has not repeated the parties' arguments in this order.

Summary judgment is an appropriate method of disposing of cases in which there are no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. *See* Fed. R. Civ. P. 56(c). A party moving for summary judgment has the burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to summary judgment as a matter of law. *See Celotex Corp. v. Catrett,* 477 U.S. 317, 106 S.Ct. 2548 (1986). The evidence must be viewed in a light favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant's favor. *See Lloyd's Food Products Inc. v. Eli's Inc.,* 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993); *Opryland USA Inc. v. Great American Music Show Inc.,* 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992).

After reviewing the submissions and arguments of the parties, we find that at a minimum, genuine issues of material fact exist as to similarity or dissimilarity of the commercial impressions of the marks at issue. *See Olde Tyme Foods Inc. v. Roundy's Inc.,* 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992).

In view thereof, plaintiff's motion for summary judgment in Cancellation No. 92028130 is denied.[2]

Proceedings herein are resumed and trial dates are reset as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	CLOSED
30-day testimony period for party in position of plaintiff to close:	9/5/05
30-day testimony period for party in position of defendant to close:	11/4/05
15-day rebuttal testimony period for plaintiff to close:	12/19/05

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.l25.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.l29.

[2] The parties should note that all evidence submitted in support of and in opposition to the motion for summary judgment is of record only for consideration of said motion. Any such evidence to be considered in final hearing must be properly introduced in evidence during the appropriate trial periods. *See Levi Strauss & Co. v. Josephs Sportswear Inc.,* 28 USPQ2d 1464 (TTAB 1993); and *Pet Inc. v. Bassetti,* 219 USPQ 911 (TTAB 1983).